

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 452 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

UNION OF INDIA

Versus

GOKULCHAND G SHARMA

Appearance:

MR RM VIN for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 11/02/2000

ORAL JUDGEMENT

1. This Second Appeal arises out of a judgment and order rendered by District Judge, Junagadh, in Regular Civil Appeal No.80 of 1980, arising out of Regular Civil Suit No.417 of 1974, from the Court of Joint Civil Judge (S.D.), Junagadh.

2. The facts, in nutshell, are that present respondents were some of the railway employees, who came to be dismissed by the railway authorities on account of their indulging in railway strike. They, therefore, along with several other railway employees who were dismissed, preferred the said suit in the Court of Civil Judge (S.D.), at Junagadh, for declaration and injunction. The suit was preferred without giving notice as required under Section 80 of the Code of Civil Procedure. A contention was raised in this behalf by the railway authorities and the Civil Court came to a conclusion that notice under Section 80 was not required to be given as the action on part of the railway authorities was null and void and, ultimately, the suit was decreed in favour of present respondents, who were original plaintiffs No.12, 15 and 17.

3. The judgment and decree was, therefore, carried in appeal before the District Court. The District Court, after hearing both the sides, confirmed the judgment and order of the Trial Court by dismissing the appeal. The railway authorities have, therefore, preferred this Second Appeal.

4. The respondents have been served, but have chosen not to appear before this Court.

5. Mr. R.M. Vin, learned counsel appearing for the appellant-railway authorities submitted that the respondents along with other striking employees were reinstated by the railway authorities soon after the strike was over and now, therefore, they are not contesting. He submitted that the only question that is required to be considered is whether the action on part of the railway authorities was rightly held to be null and void. According to him, it can be said, at the most, to be illegal as it was not without jurisdiction.

6. In view of the fact that the respondents have already been reinstated in service and have, therefore, chosen not to appear before this Court, this being a mixed question of fact and law, it would only amount to an academic exercise which can wait for a better case/cause. The appeal is preferred mainly on this count and, therefore, is not required to be decided on its merits. The appeal, thus, stands disposed of accordingly, with no orders as to costs.

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